bankrupt, and the lessor leased the premises to another at a lower rent than that reserved, and filed a claim against the bankrupt's estate for the difference. *Held*, that the claim is not provable in bankruptcy. *Matter of Roth & Appel*, 24 Am. B. Rep. 588 (C. C. A., Second Circ.). *Held*, that the claim is provable. *In re Caloris Mfg. Co.*, 179 Fed. 722 (Dist. Ct., E. D. Pa.).

Under section 63a of the Bankruptcy Act of 1898, debts may be proved which are "(1) a fixed liability, . . . absolutely owing at the time of the filing of the petition; . . . (4) founded upon a contract." What contingent claims are provable in bankruptcy is still unsettled. See 23 HARV. L. REV. 636. Claims for unaccrued rent, however, are incapable of being proved. *Watson* v. *Merrill*, 136 Fed. 359; *In re Mahler*, 105 Fed. 428. Regarding the claim in the present case as one of indemnity for loss of rent, it would be desirable to allow it to be proved, for the bankrupt would be thereby released from future liability and the lessor protected. But by the accepted construction of the Bankruptcy Act, the first and fourth clauses of section 63a must be taken together, and the debt founded upon a contract must be a fixed liability absolutely owing at the time of the filing of the petition. *In re Adams*, 130 Fed. 381. Hence the claim should not be provable.

CONFLICT OF LAWS — MAKING AND VALIDITY OF CONTRACTS — WHAT LAW GOVERNS INDORSEMENT. — A note made by a husband, payable to the order of his wife, was indorsed by her for his accommodation and delivered by him in New York. The note was dated and payable in New Jersey. *Held*, that the law of New Jersey governs the validity of the indorsement, and that there can be no recovery from the wife. *Basilea* v. *Spagnuolo*, 77 Atl. 532 (N. J., Sup. Ct.).

A married woman cannot be held as an accommodation indorser in New Jersey. GEN. STAT. N. J., TIT. MARRIED WOMEN, § 26. But the capacity of a married woman to contract depends on the law of the place where the contract is made. *Milliken* v. *Pratt*, 125 Mass. 374. A contract of indorsement is made where the note is delivered. *Briggs* v. *Latham*, 36 Kan. 255; *Stubbs* v. *Colt*, 30 Fed. 417. Even when the note is payable at a particular place the contract of indorsement, being a distinct contract from that of the maker, is made where delivery is made and is governed by the laws of that place. STORY, CONF. OF LAWS, 8 ed., § 315. In the principal case, therefore, the contract of indorsement was made in New York, and by the law governing the capacity of married women there the defendant was liable. N. Y. CONSOL. LAWS, 1909, c. 19, § 51. The decision is therefore erroneous, unless it can be sustained on the ground that a contract valid in New York will not be enforced by the New Jersey courts if it is condemned by the positive law of the state, or inconsistent with the public policy thereof as declared by the legislature. *Thompson* v. *Taylor*, 65 N. J. L. 107.

CONFLICT OF LAWS — PERSONAL JURISDICTION — JURISDICTION TO AWARD THE CUSTODY OF CHILDREN. — A woman obtained a divorce from her husband in Connecticut, and was given the custody of their children. Afterwards she went with them to Germany, intending to make her home there. Some years later, at the petition of the father, the decree for the custody of the children was modified so as to require the mother to send them to the father every year for a visit. *Held*, that this modification is proper. *Morrill* v. *Morrill*, 77 Atl. 1 (Conn.). See NOTES, p. 142.

CONSTITUTIONAL LAW — MAKING AND CHANGING CONSTITUTIONS — MATTER APPROPRIATE FOR CONSTITUTION. — The Missouri constitution provides for the initiation of constitutional amendments by popular petition. The Secretary of State refused to file a petition for an amendment fixing legislative districts for ten years. *Held*, that he need not file the petition, (1) be-

cause it does not in form comply with requirements of the constitution, and (2) because the subject matter, being temporary in character, is appropriate not for a constitutional provision but for a statute. *State ex rel. Halliburton* v. *Roach*, 130 S. W. 689 (Mo.).

There are undoubtedly many provisions in the state constitutions which, from the view-point of political science, belong properly in the field of legislative enactment. See 1 BRYCE, AMERICAN COMMONWEALTH, ch. 37. But if the principal case can be rested on the second ground, it seems to follow that such provisions, although formally made a part of the constitution, are really not such, and can be repealed by the legislature, a result for which hardly any one would contend.

CONSTITUTIONAL LAW — SEPARATION OF POWERS — THE REFERENDUM. — The Wisconsin legislature passed a direct primary law and provided that it should go into effect only if ratified by a majority of the votes cast at the next general state election. *Held*, that the statute is constitutional. *State ex rel. Van Alstine* v. *Frear*, 142 Wis. 320. See NOTES, p. 141.

CONTRIBUTORY NEGLIGENCE — PERSONS UNDER DISABILITY — WHETHER MENTAL CAPACITY OF ADULT PERSON MAY BE CONSIDERED. — In an action against a street railway company for personal injuries alleged to have been caused by the defendant's negligence, the jury was instructed that in determining whether the plaintiff had been guilty of contributory negligence the fact that the plaintiff's mental capacity was less than that of the average adult person should be considered. *Held*, that the instruction is correct. *Hovden* v. *Seattle Electric Co.*, 180 Fed. 487 (Circ. Ct., W. D. Wash.).

This decision is contrary to the universal rule that every adult, who is neither so insane nor so imbecile as to be utterly incapable of taking precautions, is held to the degree of care which is exercised by men of ordinary prudence under similar circumstances. *Davis, Adm'x* v. *Concord & Montreal R. Co.*, 68 N. H. 247; *Worthington & Co.* v. *Mencer*, 96 Ala. 310. The case is not in accord with the law as laid down by the state courts of Washington. See *Williams* v. *Ballard Lumber Co.*, 41 Wash. 338, 345. The opinion is based upon a case which is plainly distinguishable as involving only the question of a child's negligence. *Baltimore & Potomac R. Co.* v. *Cumberland*, 176 U. S. 232. A child's duty of care is not measured by the adult standard. In some cases the degree required is stated to be that which an ordinarily prudent child of the same age would exercise under similar circumstances. *Rolling Mill Co.* v. *Corrigan*, 46 Oh. St. 283. In other cases, the mental and physical maturity and capacity of the child, besides the age, have determined responsibility. *Illinois Iron & Metal Co.* v. *Weber*, 196 Ill. 526; *Western & Atlantic R. Co.* v. *Young*, 81 Ga. 397. Exactly what is the child's standard is thus an open question. But the adult standard takes no account of the personal equation, and the principal case seems clearly wrong.

CORPORATIONS — ACQUISITION OF MEMBERSHIP — EFFECT OF INSOLVENCY OF CORPORATION ON RIGHT TO RESCIND STOCK SUBSCRIPTION FRAUDULENTLY OBTAINED. — Certain persons were fraudulently induced to subscribe for stock in a banking corporation which shortly afterwards made an assignment for the benefit of creditors. In proceedings for the appointment of a receiver, these persons intervened with a petition that their contracts be rescinded. *Held*, that they may rescind. *Gress* v. *Knight*, 68 S. E. 834 (Ga.). See NOTES, p. 147.

CORPORATIONS — CAPITAL, STOCK, AND DIVIDENDS — STOCK ISSUED IN PAYMENT FOR OVERVALUED PROPERTY. — The stockholders of two corporations entered into an agreement of consolidation. Corporation X was to issue